

1 those areas.

2 Q. Okay does it refresh your recollection as
3 to those -- as to whether those were the areas you
4 were aiming to send the faxes to?

5 A. No.

6 Q. Does it refresh your recollection as to
7 whether or not when you purchased the corporate
8 list, you asked them to produce corporate companies
9 in those areas?

10 A. No.

11 Q. Okay. If you look at LD102.

12 A. (Witness complies.)

13 Q. And if you look about a quarter of the way
14 down, it's got Ballard Healthcare.

15 A. Uh-huh, yes.

16 Q. And are you aware that Ballard Healthcare
17 is the plaintiff in this litigation?

18 A. I am.

19 Q. Are you aware that Ballard Healthcare
20 received a facsimile from Kohll's Pharmacy?

21 A. No.

22 Q. Are you aware that Ballard Healthcare
23 alleges in the litigation that it received a fax?

24 A. Yes.

25 Q. If you look at LD360.



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Exhibit B-1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BALLARD NURSING CENTER, INC.,)	
Plaintiff,)	
vs.)	No. 2010 CH 17229
)	
KOHL'S PHARMACY & HOMECARE, INC.,)	
and JOHN DOES 1-10,)	
Defendants.)	

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

NOW COMES Defendant, KOHL'S PHARMACY & HOMECARE, INC., by and through counsel, KONICEK & DILLON, P.C., and for their Answers to Plaintiff's Interrogatories states as follows:

INTERROGATORIES

1. Identify each person involved in answering these Interrogatories and the information supplied by each.

RESPONSE: Laurie Dondelinger, Marketing Manager, and David Kohl.

2. Identify each person involved in creating the document attached to the Complaint as Exhibit A.

RESPONSE: Laurie Dondelinger, Pam Chelesvig.

3. Identify the person(s) who sent the document attached to the Complaint as Exhibit A to Plaintiff, the telephone number of the sending machine, the owner of the sending machine, and the owner's telephone number.

RESPONSE: Laurie Dondelinger sent it through WestFax's website.

4. If Defendant contends Plaintiff consented to receive the document attached to the Complaint as Exhibit A, then identify the person(s) involved in obtaining that consent, the date(s) on which that consent was obtained, the person(s) who provided that consent, and each person involved in maintaining a log or other record of Plaintiff's consent.

RESPONSE: We don't know if consent was received. We purchased the list from RedDoor Marketing which has since sold to DB101. The owner of RedDoor, Stacey Leslie, started up Trendy Data Management.

5. Identify the telephone numbers of every person other than Plaintiff who received a copy of the document attached to the Complaint as Exhibit A and the dates on which they received the document.

RESPONSE: Already supplied.

6. Identify each person involved in creating advertisement Defendant sent or caused to be sent by facsimile to any person from April 20, 2005 to the present.

RESPONSE: Laurie Dondelinger and Byron Carpenter.

7. Identify the person(s) who participated in Defendant's decision to send advertisement to facsimile machines from April 20, 2005 to the present.

RESPONSE: Laurie Dondelinger, David Kohll, Pam Chelesvig, Allen Kurland.

8. Identify the telephone service provider that provided data transmission service for the machine used to transmit the document attached to the Complaint as Exhibit A.

RESPONSE: WestFax.

9. Identify each telephone number used by Defendant in sending any facsimiles during the relevant period.

RESPONSE: 402-895-7655.

10. Identify any other manner by which Defendant has delivered facsimiles (including but not limited to computer software and home or personal fax numbers).

RESPONSE: 402-895-7655.


11. Identify each person who has been involved in formulating or establishing Defendant's policies or procedures concerning transmission of advertisement to facsimile machines.

RESPONSE: Allen Kurland. Kohl's has no set policies and procedures.

12. Describe in detail how Defendant obtained or developed a list of persons and/or fax numbers to which advertising faxes were sent. Include in your response (1) whether Defendant obtained possession of the list in any form, (2) if so, what happened to it, (3) whether any portion of the list was purchased, and if so, from whom and for how much, and (4) whether automatic dialing equipment was used to generate any list.

RESPONSE: RedDoor Marketing was the entity who processed information relating to the advertising faxes that existed. We are unaware of the lists that RedDoor maintains. We believe fees were paid to RedDoor Marketing for advertising services. We are not aware as to whether automatic dialing was used.

Respectfully Submitted,


Attorneys for KOHL'S PHARMACY
& HOMECARE, INC.

Daniel F. Konicek
Amir Tahmassebi
KONICEK & DILLON, P.C.
Firm No. 37199
21 W. State St.
Geneva, IL 60134
630.262.9655

Attestation

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

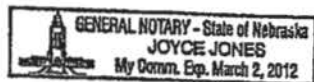
David Kohll, being first duly sworn on oath, deposes and states that he is a defendant in the above-captioned matter; that he has read the foregoing document, and the responses made herein are true, correct and complete to the best of his knowledge and belief.



David Kohll

SUBSCRIBED and SWORN to before me
this 12 day of July, 2011.



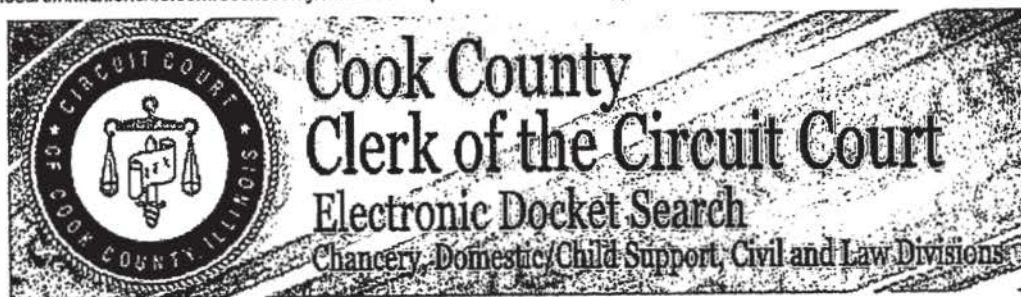


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Exhibit B-2



Exhibit C-1



Division: Chancery

Click on Case Number for Case Information Summary

Name Search Results for: BALLARD NURSING CENTER

<u>Case Number</u>	<u>Plaintiff</u>	<u>Defendant</u>	<u>Date Filed</u>
2010-CH-43451	BALLARD NURSING CENTER INC	POLARIS GROUP INC	10/05/2010
2010-CH-43452	BALLARD NURSING CENTER INC	DIALYSIS PURCHASING ALLIAN	10/05/2010
2010-CH-43454	BALLARD NURSING CENTER INC	C P MOTION INC INC	10/05/2010
2010-CH-20912	BALLARD NURSING CENTER INC	CENTRAL HOSPITALITY SUPPLY	05/14/2010
2010-CH-17229	BALLARD NURSING CENTER INC	KOHLLS PHARMACY HOMECARE	04/20/2010
2010-CH-16637	BALLARD NURSING CENTER	CURASPAN HEALTH GROUP INC	04/16/2010
2010-CH-16640	BALLARD NURSING CENTER	MAHARISHI HOSPITALITY INC	04/16/2010
2010-CH-16644	BALLARD NURSING CENTER	FIRST AID CLINIC LLC	04/16/2010
2010-CH-06164	BALLARD NURSING CENTER INC	SCOOP PUBLISHING LLC	02/11/2010
2010-CH-06166	BALLARD NURSING CENTER INC	UNIVERSAL CONNECTIONS INC	02/11/2010
2010-CH-05865	BALLARD NURSING CENTER	ENVIRONMENTAL MARKETING	02/10/2010
2010-CH-05866	BALLARD NURSING CENTER	AMERICAN BLINDS DRAPERS	02/10/2010
2009-CH-44279	BALLARD NURSING CENTER INC	OLDE SCHOOL TEXTILES FURNI	11/09/2009
2009-CH-44280	BALLARD NURSING CENTER INC	IMPERIAL TEXTILE WHOLESALE	11/09/2009

2009-CH-35681	BALLARD NURSING CENTER INC	VALUCARE INC	09/25/2009
2009-CH-15791	BALLARD NURSING CENTER	JACKSON PARK HOSPITAL	04/10/2009
2009-CH-01241	BALLARD NURSING CENTER IN	SOUTHERN LIFE SYSTEMS INC	01/12/2009
2008-CH-48230	BALLARD NURSING CENTER IN	WATER STREET HEALTHCARE	12/29/2008
2008-CH-43382	BALLARD NURSING CENTER	APOLLO HEATH SYSTEMS	11/18/2008
2008-CH-29930	BALLARD NURSING CENTER	UNITHERM INC	08/15/2008
2008-CH-29637	BALLARD NURSING CENTER INC	KINRAY INC	08/13/2008
2008-CH-29058	BALLARD NURSING CENTER	PEORIA SPECIALTY INC	08/08/2008
2008-CH-29062	BALLARD NURSING CENTER	AGGEUS HEALTHCARE P C	08/08/2008
2008-CH-17320	BALLARD NURSING CENTER	MEDICAL EQUIPMENT SALES	05/12/2008
2008-CH-05090	BALLARD NURSING CENTER	KMI SUPPLIES INC	02/08/2008
2008-CH-04130	BALLARD NURSING CENTER INC	STAR SILK WOOLEN CO	01/31/2008
2008-CH-03119	BALLARD NURSING CENTER	MDU ENTERPRISE INC	01/24/2008
2008-CH-02229	BALLARD NURSING CENTER INC	MID AMERICA GROUP INC	01/17/2008
2008-CH-00994	BALLARD NURSING CENTER INC	HEXAGRAM HOME HEALTH CARE	01/09/2008
2007-CH-38630	BALLARD NURSING CENTER INC	ATC HOLDINGS INC	12/28/2007
2007-CH-36133	BALLARD NURSING CENTER	ACCUBUILT INC	12/07/2007
2007-CH-30332	GOLAN PRODUCTIONS, INC	JERRY FORD COMPANY LLC	10/22/2007
2007-CH-30049	BALLARD NURSING CENTER INC	SKIL CARE CORPORATION	10/18/2007
2007-CH-23608	BALLARD NURSING CENTER	KAIGLER COMPANY	08/28/2007
2007-CH-23288	BALLARD NURSING CENTER	QUADEL CONSULTING CORPOR	08/24/2007
2007-CH-	BALLARD NURSING	GENERAL HEALTHCARE	08/23/2007

<u>23115</u>	CENTER INC	RESOURC	
<u>2007-CH-23121</u>	BALLARD NURSING CENTER INC	BES INDUSTRIES INC	08/23/2007
<u>2007-CH-23122</u>	BALLARD NURSING CENTER INC	AMERICAN STRATEGIC MANAGEM	08/23/2007
<u>2007-CH-20470</u>	BALLARD NURSING CENTER	AMERICAN HEALTHSERVICE	08/01/2007
<u>2007-CH-17914</u>	BALLARD NURSING CENTER	D M DOUBLE FORTUNE INC	07/09/2007
<u>2007-CH-17444</u>	BALLARD NURSING CENTER	WOODS EQUIPMENT COMPANY	07/03/2007
<u>2007-CH-16977</u>	BALLARD NURSING CENTER INC	M M SCRUBS DIST INC	06/27/2007
<u>2007-CH-15898</u>	BALLARD NURSING CENTER INC	ALL PRO ELECTRIC INC	06/15/2007
<u>2007-CH-15902</u>	BALLARD NURSING CENTER INC	MEDCO EQUIPMENT INC	06/15/2007
<u>2007-CH-12558</u>	BALLARD NURSING CENTER INC	D W G INC	05/09/2007
<u>2007-CH-01923</u>	BALLARD NURSING CENTER	CARDINAL CARTRIDGE INC	01/19/2007
<u>2006-CH-28661</u>	BALLARD NURSING CENTER	MED SUPPLY TAMPA	12/29/2006
<u>2006-CH-28491</u>	BALLARD NURSING CENTER	TOTAL SANITY SOLUTION	12/28/2006
<u>2006-CH-18542</u>	BALLARD NURSING CENTER INC	CALDERON TEXTILES INC	09/07/2006
<u>2006-CH-15512</u>	BALLARD NURSING CENTER	REDWOOD BIOTECH	08/02/2006
<u>2006-CH-00678</u>	BALLARD NURSING CENTER INC	PERSONAL SAFETY CORPORATIO	01/11/2006
<u>2005-CH-22714</u>	BALLARD NURSING CENTER	G AVERY ENTERPRISES INC	12/30/2005
<u>1994-CH-01691</u>	THE ABINGTON	HSM DEVELOPMENT CORP	02/22/1994

[Start a New Search](#)

Exhibit C-2

Ballard Nursing Center, Inc. is a plaintiff in 14 cases.

1:10-cv- Ballard Nursing Center, Inc. v. ASD Specialty filed 10/07/10 closed 04/12/11

Healthcare, Inc., et al

filed 11/04/10 closed 04/11/11

Ballard RN Center, Inc. v. Sterling Distributors, Inc. et al filed 12/01/11 closed 05/24/12

PACER Service Center			
Transaction Receipt			
03/24/2016 12:16:03			
PACER Login:	hinshaw0185:2559590:0	Client Code:	
Description:	Search	Search Criteria:	Last Name: Ballard Nursing Center
Billable Pages:	1	Cost:	0.10

Exhibit D

Atty. No. 41106

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION 3:49

BALLARD RN CENTER, INC. f/k/a
BALLARD NURSING CENTER, INC.,

Plaintiff,

v.

KOHL'S PHARMACY & HOMECARE, INC.,
and JOHN DOES 1-10,

Defendants.

FILED-7
2012 NOV 27
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.
DEPUTY CLERK

10 CH 17229

Judge Cohen

NOTICE OF MOTION

TO: Please see Certificate of Service.

PLEASE TAKE NOTICE that on Nov 27th, 2012 at 10:00 a.m., we shall appear before Judge Cohen in Room 2308 of the Richard J. Daley Center and then and there present: PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION, a copy of which is attached and hereby served upon you.



Julie Clark

Daniel A. Edelman
Julie Clark
Heather A. Kolbus
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
120 S. LaSalle Street, Suite 1800
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

CERTIFICATE OF SERVICE

I, Julie Clark, certify that I had a copy of the foregoing document sent on November 19, 2012, by United States mail and electronic mail to the parties named below:

Amir R. Tahmassebi
Konicek & Dillon, P.C.
21 W. State Street
Geneva, IL 60134
amir@konicekdillonlaw.com


Julie Clark

Daniel A. Edelman
Julie Clark
Heather A. Kolbus
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
120 S. LaSalle Street, Suite 1800
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

Atty. No. 41106

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BALLARD RN CENTER, INC. f/k/a
BALLARD NURSING CENTER, INC.,

Plaintiff,

v.

KOHL'S PHARMACY & HOMECARE, INC.,
and JOHN DOES 1-10,

Defendants.

10 CH 17229

Judge Cohen

PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION

Plaintiff Ballard RN Center, Inc. f/k/a Ballard Nursing Center, Inc. ("Plaintiff") respectfully requests that this Court enter an order determining that this action may proceed on behalf of a class against Defendant Kohl's Pharmacy & Homecare, Inc. ("Kohl's" or "Defendant"). The class consists of (a) all parties (b) who, on or about March 3, 2010, (c) were sent advertising faxes by defendant (d) and with respect to whom defendant cannot provide evidence of consent or a prior business relationship¹.

In support of this motion, plaintiff states:

I. NATURE OF THE CASE

1. Plaintiff brought this action after receiving an unsolicited and unwanted advertising fax (Exhibit A) sent by Kohl's. Plaintiff alleges that Kohl's violated the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA") (Count I), that Kohl's violated the Illinois Consumer Fraud Act, 815 ILCS 505/2 ("ICFA") (Count II); and committed the tort of conversion

¹ Having conducted discovery, Plaintiff has revised and limited the Class Definition from that included in its original motion for Class Certification filed on April 20, 2012.

(Count III).

2. The TCPA and implementing Federal Communications Commission regulations (Count I) make it illegal to send unsolicited advertising faxes without the recipient's "express invitation or permission," 47 U.S.C. §227(a)(4); 47 C.F.R. §64.1200(f)(5). The ability to "opt out" is not sufficient.

3. Plaintiff contends (Count II) that the transmission of unsolicited advertising faxes is also an unfair practice that violates §2 of the ICFA, 815 ILCS 505/2. The prohibitions of "unfair" and "deceptive" practices are distinct. Elder v. Coronet Ins. Co., 201 Ill.App.3d 733, 558 N.E.2d 1312 (1st Dist. 1990). In determining whether a practice is "unfair," both federal and state law consider:

(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — whether, in other words, it is within at least the penumbra of some common-law, statutory or other established concept of unfairness;

(2) whether it is immoral, unethical, oppressive or unscrupulous;

(3) whether it causes substantial injury to consumers (or competitors or other businessmen).

FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244-45 n. 5 (1972); Robinson v. Toyota Motor Credit Corp., 201 Ill.2d 403, 775 N.E.2d 951 (2002); Scott v. Association for Childbirth at Home, Int'l, 88 Ill.2d 279, 430 N.E.2d 1012 (1981); Elder v. Coronet Ins. Co., *supra*.

4. Plaintiff further contends (Count III) that Defendant converted the paper and toner in his fax machine to its own use by using them to print unsolicited and unwanted advertising faxes illegally sent to plaintiffs. The elements of conversion are (1) plaintiffs' right to the property

at issue, (2) plaintiffs' absolute and unconditional right to immediate possession of the property; (3) defendants' assertion of dominion and control over the property; and (4) notice of plaintiffs' rights. The fourth element is satisfied when the taking of the property is wrongful in the first instance, as in the case of theft; otherwise, it can be satisfied by demand. Stathis v. Geldermann, Inc., 258 Ill.App.3d 690, 630 N.E.2d 926 (1st Dist. 1994); Jensen v. Western & Indiana R. Co., 94 Ill.App.3d 915, 419 N.E.2d 578 (1st Dist. 1981); Bruner v. Dyball, 42 Ill. 34 (1866). Plaintiff clearly owned and had an absolute and unconditional right to the paper and toner; by causing them to be used to print their unsolicited advertisements, Kohll's converted the paper and toner and rendered them unusable by plaintiff; Kohll's knew that it had no right to the paper and toner and was in effect stealing them.

II. REQUIREMENTS FOR CLASS CERTIFICATION

5. Section 2-801 of the Illinois Code of Civil Procedure states:

Prerequisites for the maintenance of a class action.

An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

- (1) The class is so numerous that joinder of all members is impracticable.**
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.**
- (3) The representative parties will fairly and adequately protect the interest of the class.**
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.**

6. Class actions are essential to enforce laws protecting consumers. As the

Illinois Appellate Court stated in Eshaghi v. Hanley Dawson Cadillac Co., 214 Ill. App. 3d 995, 574 N.E.2d 760 (1st Dist. 1991):

In a large and impersonal society, class actions are often the last barricade of consumer protection. . . . To consumerists, the consumer class action is an inviting procedural device to cope with frauds causing small damages to large groups. The slight loss to the individual, when aggregated in the coffers of the wrongdoer, results in gains which are both handsome and tempting. The alternatives to the class action -- private suits or governmental actions -- have been so often found wanting in controlling consumer frauds that not even the ardent critics of class actions seriously contend that they are truly effective. The consumer class action, when brought by those who have no other avenue of legal redress, provides restitution to the injured, and deterrence of the wrongdoer. (574 N.E.2d at 764, 766)

7. In determining whether a class action will be allowed, the Court should resolve any doubt regarding the propriety of certification "in favor of allowing the class action," so that it will remain an effective vehicle for deterring corporate wrongdoing. Esplin v. Hirschi, 402 F.2d 94, 101 (10th Cir. 1968); accord, In re Folding Cartons Antitrust Litigation, 75 F.R.D. 727 (N.D. Ill. 1977). Finally, the class action determination is to be made as soon as practicable after the commencement of an action brought as a class action, and before any consideration of the merits (§2-802 of the Code of Civil Procedure).

8. As demonstrated below, each of the requirements for class certification is met.

A. Numerosity

9. The numerosity requirement is satisfied if it is reasonable to conclude that the number of members of the proposed class is greater than the minimum number required for class certification, which is about 10-40. Kulins v. Malco, 121 Ill. App. 3d 520, 530, 459 N.E.2d 1038 (1st Dist. 1984) (19 and 47 sufficient); Swanson v. American Consumer Industries, 415 F.2d 1326, 1333 (7th Cir. 1969) (40 class members sufficient); Cypress v. Newport News General &